

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WAYNE A. PORRETTI,

Case No. 2:20-cv-00249-APG-BNW

Plaintiff,

ORDER

v.

DIRECTOR OF NDOC, *et al.*,

Defendants.

I. DISCUSSION

Plaintiff has filed a motion seeking appointment of counsel in this action. (ECF No. 15).

A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’ *Id.* “Neither of these considerations is dispositive and instead must be viewed together.” *Id.*

In the instant case, the Court does not find exceptional circumstances that warrant the appointment of counsel at this time. The issues in this case are not complex. In addition, although Plaintiff indicates that he has some psychological issues, it appears from the filings in this case that he has not had difficulty communicating and stating claims compared to the typical pro se plaintiff. Furthermore, as with many civil rights actions, I have permitted some of the claims in Plaintiff's complaint to proceed, but that decision was based only on allegations, not evidence. It therefore would be premature to assess Plaintiff's likelihood of success in this action. Accordingly, I deny the motion for appointment of counsel without prejudice.

II. CONCLUSION

For the foregoing reasons, IT IS ORDERED that the motion for appointment of counsel (ECF No. 15) is denied without prejudice.

DATED: February 9, 2021

UNITED STATES DISTRICT JUDGE